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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, ex rel.
 SALINA SAVAGE, SAVAGE LOGISTICS,
 LLC,

Plaintiff,

vs.

WASHINGTON CLOSURE HANFORD LLC;
 FEDERAL ENGINEERS AND
 CONSTRUCTORS, INC., PHOENIX
 ENTERPRISES NW, LLC; DENNIS
 HOUSTON, BERNIE LAVERENTZ, and
 JONETTA EVERANO, DOES I-V
 PHOENIX-ABC A JOINT VENTURE;
 ACQUISITION BUSINESS CONSULTANTS;
 JESSICA MORALES; SAGE TEC LLC;
 LAURA SHIKASHIO.

Defendants.

No. CV-10-5051-EFS

THIRD AMENDED COMPLAINT FOR
 VIOLATION OF FEDERAL FALSE
 CLAIM ACT: SMALL BUSINESS ACT
 15 USC §637 AND 15 USC §645;
 HUBZONE 15 USC §657;FOR
 RETALIATION UNDER 31 USC 3730
 (h)(1) ;THE COMPETITION IN
 CONTRACTING ACT 41 USC §243;
 (2)FOR INTERFERENCE WITH
 CONTRACT AND FOR VIOLATION OF
 THE WASHINGTON STATE UNFAIR
 TRADE PRACTICES ACT RCW
 19.86.010, *et seq.*

JURY TRIAL DEMANDED

I. INTRODUCTION

1.1 This action is based upon continuing attempts by Washington Closure Hanford (WCH), Federal Engineers and Constructors (FE&C), Phoenix Enterprises Northwest (PENW), Acquisition Business Consultants, Jessica Morales, Phoenix-ABC A Joint Venture, Sage Tec

1 LLC, Laura Shikashio, Dennis Houston, Bernie Laverentz and Jonetta Everano, and Does I-V to
2 present false claims in violation of the Federal False Claims Act, 31 USC §§ 3729 and 3730.

3 1.2 Defendants have presented false claims for payment to the United States of
4 America by means of falsely certifying their compliance with the terms of the River Corridor
5 Closure Contract, Contract No. DE-AC06-05RL 14655, and the requirement of Section J-4 that it
6 contract 65% of the work to qualified small businesses, 22% to small disadvantaged businesses,
7 and 13% to women-owned small businesses. Defendants have also presented false claims by
8 expressly and impliedly certifying that the Truck and Pup subcontract, and succeeding contracts
9 let by WCH to FE&C or PENW, to Phoenix-ABC A Joint Venture, and to Sage Tec, LLC, were
10 competed in accordance with federal law, regulations, and the requirements of the River Closure
11 Contract, including, but not limited to the Subcontracting Plan that was required of WCH as a
12 condition of award and payments.

13 1.3 From before the award of the first Truck and Pup contract in May, 2009 WCH,
14 FE&C, PENW, and individual defendants Bernie Laverentz and Jonetta Everano, in bad faith
15 conspired to breach the requirement that it carry out the subcontracting plan in good faith by
16 entering into a series of sham procurements with Jonetta Everano and her companies. After the
17 award of the first Truck and Pup Contract, the named defendants continued to enter into sham
18 transactions with Phoenix and Jonetta Everano related entities, Phoenix Enterprises Northwest,
19 and Phoenix-ABC A Joint Venture, with knowledge that those entities were pass through
20 companies who merely provided their WOSB or HUBZone name and status, and with the
21 intention to avoid statutory and regulatory competitive bidding requirements, and the
22 requirements that awards be made based upon competitive bidding.

23 1.4 Defendants violated federal law in knowingly misrepresenting the small business
24 size status and HUBZone status of PENW and Phoenix-ABC A Joint Venture in violation of 15
25 USC § 645(d) and in awarding contracts to PENW and Phoenix-ABC A Joint Venture knowing
26 that it could not qualify as a small disadvantaged, women-owned, or HUBZone business.

1 1.5 The false certifications were also an attempt to avoid the penalty of up to \$3
2 million for each milestone, and after a total reduction of otherwise earned fees for the contract up
3 to \$9 million. This is set forth in Section H-28 of the River Closure Contract.

4 1.6 WCH, as is more definitively set out, *infra*, after the unlawful award to
5 PENW/FE&C in May, 2009, continued to exercise options and award subcontracts to
6 PENW/FE&C, and to other entities in which Jonetta Everano had an interest that were set aside
7 for small businesses while knowing that PENW and/or FE&C were not qualified to compete for
8 or to receive an award.

9 1.7 WCH has, prior to, and particularly since February, 2009, failed to carry out the
10 Subcontracting Plan in good faith and thereby placed itself in material breach of its contract with
11 the Department of Energy (DOE). WCH has falsely certified to the DOE that it was competing
12 contracts as required by its contract, applicable laws and regulations, while at the same time
13 failing to award contracts based upon competition and actively conspiring to rig awards to
14 favored subcontractors.

15 1.8 WCH has knowingly violated ARRA, the Competition in Contracting Act, The
16 Federal Acquisition Regulations (FAR) and the applicable competition requirements of DEAR
17 906 by knowingly using false records and statements to justify sole source awards under
18 “unusual and compelling circumstances” when it knew that such circumstances did not exist.

19 1.9 Named Defendants in addition to WCH have knowingly violated Title 13 CFR
20 121 by competing for, accepting, and receiving payments for, contracts set aside for competition
21 and award to Small Disadvantaged Businesses.

22 1.10 Defendants Acquisition Business Consultants (ABC), Phoenix Enterprises
23 Northwest (PENW), Jessica Morales, Jonetta Everano, and Washington Closure Hanford (WCH)
24 have conspired and knowingly awarded and accepted contracts set aside for HUBZone certified
25 businesses to entities known to them not to be certified HUBZone businesses, in violation of the
26

1 subcontracting plan made part of the DOE Federal Procurement describe herein, the Federal
2 Acquisition Regulations (FAR) and 15 USC §§637, 645, and 657.

3 1.11 Relator Savage's claims on behalf of the United States against Defendants Sage
4 Tec, LLC and Laura Shikashio, arising out of the \$15,939,488.00 Subcontract C025228A00 of
5 falsely claimed WOSB and for the Truck and Pup Contract in the amount of \$2,779,581.10 of
6 falsely claimed small business credit have been assumed by the United States in its complaint in
7 partial intervention under 31 USC 3730 (b) (4) (A). Relator Savage only reserves her rights
8 under 31 USC 3730 (c) and (d) to the extent the government recovers. Such partial intervention
9 was as a result of Salina Savage's disclosures and as pleaded in her 2nd Amended Complaint. The
10 claims of the United States against Sage Tec and Laura Shikashio are based upon the information
11 and disclosures of Salina Savage.

12 1.12 Relator Salina Savage brings this action after voluntarily disclosing her
13 knowledge and information to the United States as required by 31 USC §3730(e) (4) (B), all of
14 which she has personal knowledge.

15 1.13 Defendant WCH threatened to, and subsequently retaliated against Salina Savage
16 if she pursued her successful challenge to the award of the Truck and Pup Contract on the
17 grounds that PENW was not a small business, but was rather affiliated and dependent upon
18 FE&C. Since that challenge, and Salina Savage's disclosure that she would attempt to stop
19 violations of the false claims act by defendants, WCH fulfilled the threats from Dennis Houston,
20 WCH's contracting officer, and Salina Savage's company, Savage Logistics, has not only not
21 been awarded any subcontracts with WCH at the Hanford Reservation, but also has not been
22 allowed to even compete for the award of subcontracts that were to be set aside for award to
23 qualified woman owned, small disadvantaged businesses.

24 1.14 The claims by Savage Logistics for interference with contract against the named
25 individuals and organizations arise out of the same bid rigging and false certifications that
26

1 underlay the false claims act. These illegal activities resulted in Savage Logistics being denied a
2 contract that it otherwise would have been awarded.

3 1.15 The contract expenditures at issue in this lawsuit are subject to the requirements
4 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

5 **II. JURISDICTION AND VENUE**

6 2.1 This Court has subject matter of the Federal False Claims action pursuant to 28
7 USC §1331 and 31 USC §3732(a), which specifically confers jurisdiction on this Court for
8 actions brought pursuant to 31 USC §3729 and §3730. 31 USC §3730(a) provides that “[a]ny
9 action under section 3730 may be brought in any judicial district in which the defendant, or in
10 the case of multiple defendants, any one defendant can be found, resides, transacts business or in
11 which any act proscribed by section 3729 occurred.”

12 2.2 This Court has personal jurisdiction over defendants Dennis Houston, Bernie
13 Laverentz, WCH, FE&C, Phoenix-ABC A Joint Venture, Acquisition Business Consultants, Inc.
14 (Hereafter ABC), Jessica Morales, Jonetta Everano, and PENW.

15 2.3 This Court has pendant jurisdiction of the claims of Savage Logistics for
16 interference with contract and for violation of the Washington State Unfair Trade Practices Act.

17 2.4 Salina Savage has personal knowledge of the details of this scheme to submit
18 false claims.

19 2.5 Salina Savage is the original source of the information upon which this action is
20 based. She provided information for her company as part of a May, 2009 size protest to the
21 SBA that lead to the SBA’s ruling that Jonetta Everano’s company, PENW was not a small
22 disadvantaged woman owned business.

23 2.6 On December 6, 2013 the United States filed its complaint in partial intervention
24 in the complaint of Salina Savage arising out of the award of the Truck and Pup Contract
25 S009166A00 for payments other than the first segment of that work, and on the claims arising on
26 the Sage Tec, LLC procurements.

1 2.7 The new, amended claims are based upon her personal knowledge and research.

2 **III. IDENTIFICATION OF THE PARTIES**

3 3.1 In 1994, Salina Savage commenced work at Hanford for a Department of Energy
4 subcontractor as a transportation specialist. She became a member of the DOE Motor Carrier
5 Evaluation Program (MCEP) to ensure that only highly qualified carriers transported DOE
6 commodities. Relator Savage was also a member of the DOE Transportation Compliance
7 Evaluation Assistance Program (TCEAP) conducting technical assessments of DOE field
8 elements and assistance in transportation and packaging management activities. During the
9 relevant time period, Relator Salina Savage was a resident of the Eastern District of Washington
10 and was an owner and principal officer of Relator Savage Logistics, LLC, an entity incorporated
11 in the State of Washington with its principal place of business in Richland, Washington.

12 3.2 While at Hanford, Relator Savage became the subject matter expert for the Fluor
13 Hanford spare parts administrator to administer and review spare parts inventory, establish
14 quality levels and procurement specifications for critical spare parts that support the Hanford
15 Nuclear Facilities by the PassPort data base system.

16 3.3 Relator Savage trained design authorities (engineers) and quality assurance
17 personnel on the PassPort system for the maintenance, inventory and control of spare parts.

18 3.4 While working at the Hanford Facility, Relator Savage received two “Continuous
19 Process Improvement Awards” for identifying new business practices for inventory control.

20 3.5 Relator Savage has taken part in various training courses and received significant
21 certifications. These include, *inter alia*, motor carrier safety regulations seminars, fleet safety
22 and compliance seminars, hazardous material waste and radioactive transportation training,
23 waste shipper certification training, certified Commercial Vehicle Safety Alliance inspector,
24 transportation compliance evaluation systems program training, and others.

25 3.6 Relator Savage is certified by U.S. Department of Transportation Motor Carrier
26 Operating Authority License, Washington Utilities and Transportation Permit, Washington

1 Transporter License, Washington State Department of Ecology Transporter Permit, U.S.
 2 Department of Transportation, PHMSA Hazmat Registration, U.S. Small Business
 3 Administration, Small Disadvantaged Business (SDB), Certification and 8-A Business
 4 Development Certification, and others.

5 3.7 Jonetta Everano was employed by WCH from approximately 2004 until 2007, at
 6 which time she accepted employment with FE&C. While at WCH her responsibilities included
 7 providing technical field support and field subcontract administration/oversight for the Field
 8 Remediation group on the River Corridor Contract. She reviewed and approved baseline
 9 schedule, submittals and work/safety procedures; monitored, inspected, and approved
 10 subcontractor work against standards, acceptance criteria, and schedule milestones; analyzed and
 11 approved subcontractor invoices and prepared change requests; negotiated with subcontractors
 12 for change notices and added work scope; coordinated subcontractors' site permits, and training
 13 requirements; maintained project files; and initiated change notices, including identifying scope
 14 of work and estimating and approving cost. At no time material to this action did Jonetta
 15 Everano have an 8(a) certification, was she certified as a HUBZone contractor, or did she have
 16 the technical transportation certifications or experience required to qualify as a responsive,
 17 responsible contractor under the terms of the procurements issued by WCH.

18 3.8 On information and belief Jonetta Everano was a co-worker and was and is a
 19 personal friend of Sue Palmersheim, the Subcontract Specialist of WCH, who as part of her
 20 regular duties as WCH's Subcontract Specialist was in charge of, *inter alia*, assigning North
 21 American Industry Classification System Codes to subcontract work, advertising subcontracts
 22 for competition, evaluating the bids of subcontractors, making awards, and reporting compliance
 23 with the Subcontracting Plan to the DOE.

24 3.9 Jonetta Everano, President of Phoenix Enterprises NW (PENW) at all times
 25 material to this complaint was a resident of the Eastern District of Washington.
 26

1 3.10 Bernie Laverentz is the Vice President of FE&C. Beginning in 2009 he began
2 conspiring with Dennis Houston, WCH's Contracting Officer to rig bids and collude to
3 misrepresent the size and independence of subcontractors who would propose to do work under
4 the DOE River Closure Contract. The aim of this big rigging was to set up front companies to
5 receive DOE Subcontracts from WCH who would be contract with FE&C as their ostensible
6 subcontractor. FE&C, under this scheme would continue to perform the scope of work and
7 manage the subcontract with its usual procedures, supervisors and key employees. FE&C would
8 receive the great bulk of contract payments. WCH would under this scheme, claim the credit
9 against its Small Business Subcontracting Plan and satisfy its obligations under the contract to
10 use small and disadvantaged businesses.

11 3.11 Dennis Houston at all times material to this action was a contracting officer
12 employed by WCH. As such he had knowledge of upcoming procurements and had the ability to
13 provide information as to the intentions of WCH in choosing to extend the term of subcontracts
14 for hauling, such as the original Truck and Pup Contract and its options, to longer than the
15 minimum term specified in the advertisement.

16 3.12 Washington Closure Hanford (WCH) is a Washington Limited Liability
17 Company. Its members are William Poulson, David Pethick, Ellen Livingston-Behan, Mark
18 Spears, and Craig Weaver. On March 25, 2005, the United States Department of Energy (DOE)
19 awarded the project denominated "River Corridor Closure Contract" Contract No. DE-AC06-
20 05RL 14655 to WCH.

21 3.13 Federal Engineers and Constructors, Inc. (FE&C) is a corporation formed in 2001
22 whose president is Richard French, a former manager of the U.S. DOE's Office of River
23 Protection (ORP). ORP awarded the River Corridor Closure contract to WCH. WCH thereafter
24 awarded subcontracts to FE&C.

25 3.14 Phoenix Enterprises NW, LLC (PENW) is a Washington Limited Liability
26 Company whose president is Jonetta Everano.

1 3.15 Acquisition Business Consultants, Inc. (ABC) is an Alaska Corporation owned by
2 Jessica Morales, whose headquarters were at one time in Wasilla, Alaska.

3 3.16 Defendant Jessica Morales is the owner of ABC. In 2009 and thereafter Ms.
4 Morales worked as a Counselor for PTAC (Procurement Technical Assistance Centers), a
5 federally chartered association whose counselors were described as experts who could advise
6 small businesses on their eligibility for, *inter alia*, Small Disadvantaged Business, and HUBZone
7 programs. Ms. Morales resides in the Eastern District of Washington.

8 3.17 In August 2010 ABC formed a Joint Venture with PENW denominated Phoenix-
9 ABC A Joint Venture.

10 3.18 Defendant Sage Tec LLC (Sage Tec) is an entity incorporated in the State of
11 Washington with its principal place of business in Richland, Washington.

12 3.19 Defendant Laura Shikashio was the owner, president, and sole employee of Sage
13 Tec and resided within the Eastern District of Washington.

14 3.20 During the relevant time period, LAURA SHIKASHIO was the owner, operator,
15 president, and at times sole employee, of SAGE TEC and resided within the Eastern District of
16 Washington.

17 3.21 Does I-V are other employees of the defendants, whose identity is presently
18 unknown to Plaintiffs, who were co-conspirators in the acts set forth in this complaint.

19
20 **IV. THE CONTRACT AND LEGAL REQUIREMENTS OF COMPETITION**
21 **AND AWARD TO SMALL BUSINESSES**

22 **A. WCH's Required Certifications and Small Business Subcontracting Plan**

23 4.1 WCH, in order to be eligible to perform and receive payments on the subject
24 project, had to certify and maintain itself in compliance with various contract clauses, regulations
25 and laws, including but not limited to 15 USC §§637, 645, and 657, and its subcontracting plan,
26 which required that it make good faith efforts to award contracts to small woman owned,
disadvantaged businesses.

1 4.2 On July 22, 2004, WCH submitted its Small Business Subcontracting Plan (Plan)
 2 as required by its contract with DOE. The Plan was a required submittal under 15 USC §637 and
 3 the Federal Acquisition Regulations (FAR) 52.219-8 and 52.219.9. Figure 2 to the Plan
 4 identified principal categories of opportunities for small business, including specifically soils
 5 excavation and backfill for women owned small businesses.

6 4.3 FAR 52.219.9(d) (9) required a description of the efforts that WCH would make
 7 to assure that small businesses, including women-owned small businesses, would have an
 8 equitable opportunity to compete for contracts.

9 4.4 FAR 52.219-9 (d) (11) required records of the efforts made by WCH to identify
 10 the described small businesses and award contracts to them.

11 4.5 FAR 52.219-9 (k) provided that WCH's failure to comply in good faith with the
 12 requirements of the Plan was a material breach of contract. WCH, in order to be entitled to
 13 payment, impliedly certified to the DOE that it was complying in good faith with the terms of the
 14 Subcontracting Plan imposed by the FAR and by 15 USC §637 and §645.

15 4.6 FAR 52.219-25(b), part of WCH's federal contract with DOE, provided that: "For
 16 subcontractors that are not certified as a small disadvantaged business by the Small Business
 17 Administration, the Contractor shall accept the subcontractor's written self-representation as a
 18 small disadvantaged business, unless the contractor has reason to question the self-
 19 representation.

20 4.7 At all times material to this complaint WCH had reason to question PENW's self-
 21 representation that it was a small, disadvantaged, woman-owned business.

22 4.8 FAR 52.219-16 "Liquidated Damages-Subcontracting Plan" provides in part that:

23 a. Failure to make a good faith effort to comply with the Subcontracting Plan, as
 24 used in this subpart, means a willful or intentional failure to perform in accordance with the
 25 Subcontracting Plan approved under the clause in this contract entitled "Small Business
 26 Subcontracting Plan," or willful or intentional action to frustrate the Plan"

1 4.9 WCH has, at all times material alleged in this complaint, knowingly, willfully and
2 intentionally failed to perform in accordance with the subcontracting plan, and attempted to
3 frustrate the Subcontracting Plan made part of its contract.

4 4.10 DOE regulations, codified in 48 CFR 919.70, established the requirements for a
5 qualified mentor-protégé program. Section 919.7007 (a) requires that an eligible protégé had to
6 be an independent business that had been in business at least two (2) years prior to applying for
7 enrollment in a mentor protégé program. All defendants in this action at all times had actual
8 knowledge that PENW had not been in business for at least two years, and was not an
9 independent business.

10 4.11 The American Recovery and Reinvestment Act (ARRA) provides that contracts
11 using recovery act funds be awarded using competitive procedures to the maximum extent
12 possible.

13 **B. The Aid to Small Business Act**

14 4.12 The Aid to Small Business Act, 15 USCS §637(d) requires maximum practicable
15 opportunity for small businesses, including women-owned and controlled small businesses, as
16 defined therein, to participate in federal contracts. In §637(d) (4) (B) and (D) the Aid to Small
17 Business Act makes a contractor represent that it is in compliance, and will remain in compliance
18 with the Plan, as a condition of award and continuing performance. Each request for payment
19 by WCH during any time as alleged in this amended complaint is a false implied certification
20 and a false claim.

21 4.13 Section 637(d) (8) (A) requires representation that the contractor will carry out the
22 requirements of clause (3) of §637 (d) in good faith, and that failure to do so is a material breach
23 of contract. A contractor in violation, guilty of the aforesaid material breach of contract, is not
24 entitled to payment under its contracts.

25 4.14 The Aid to Small Business Act, 15 USCS §645 Offenses and Penalties, provides
26 in clause (d) that whoever misrepresents the status of any concern as a small business in order to

1 obtain for oneself or for another any subcontract that is to be included as part or all of a goal
 2 contained in a Subcontracting Plan required pursuant to section 637 (d), is subject to fines of not
 3 more than \$500,000, subject to debarment, and subject to administrative remedies under the
 4 Program Fraud Civil Remedies Act of 1986.

5 4.15 Subpart 19.301-1 of the Federal Acquisition Regulations, (FAR) requires an
 6 offeror must represent itself as a small business in good faith at the time of the bid or proposal.
 7 PENW was not a small business at the time of its proposal for the Truck and Pup Contract and
 8 neither it nor FE&C or WCH had any good faith belief that PENW was a small business at the
 9 time of its proposal.

10 4.16 The Small Business Jobs Act of 2010, enacted September 27, 2010 as Public Law
 11 111-240 provides in Part IV, Small Business Size and Status Integrity, that 15 USC §632 as
 12 amended by section 1311 is amended by adding at the end the following:

13 (w) Presumption.--

14 (1) In general.--In every contract, subcontract, cooperative agreement,
 15 cooperative research and development agreement, or grant which is set aside,
 16 reserved, or otherwise classified as intended for award to small business concerns,
 17 there shall be a presumption of loss to the United States based on the total amount
 18 expended on the contract, subcontract, cooperative agreement, cooperative
 19 research and development agreement, or grant whenever it is established that a
 20 business concern other than a small business concern willfully sought and received
 21 the award by misrepresentation.

22 (2) Deemed certifications.--The following actions shall be deemed
 23 affirmative, willful, and intentional certifications of small business size and status:

24 (A) Submission of a bid or proposal for a Federal grant, contract, subcontract,
 25 cooperative agreement, or cooperative research and development agreement
 26 reserved, set aside, or otherwise classified as intended for award to small business
 concerns.

23 V. THE FALSE CLAIMS ACT

24 5.1 Originally enacted in the 1860s to combat fraud against the Union Army during
 25 the Civil War, the False Claims Act, 31 USC §§ 3729-3733, is the primary tool with which the
 26 UNITED STATES combats fraud against the Government and protects the federal fisc. The

1 Supreme Court has held that the False Claims Act's provisions must be construed broadly to
2 reach "all types of fraud, without qualification, that might result in financial loss to the
3 Government." United States v. Neifert-White, 390 U.S. 228, 232, 88 S.Ct. 959 (1968).

4 5.2 The False Claims Act, at 31 USC § 3729(a)(1)(A) (formerly § 3729(a)(1) (2006)),
5 provides that a person is liable to the UNITED STATES for each instance in which the person
6 "knowingly presents, or causes to be presented, to an officer or employee of the United States
7 Government . . . a false or fraudulent claim for payment or approval."

8 5.3 As amended by the Fraud Enforcement and Recovery Act of 2009
9 (FERA), the false statements provision of the False Claims Act establishes liability for any
10 person who "knowingly makes, uses, or causes to be made or used, a false record or statement
11 material to a false or fraudulent claim." 31 USC § 3729(a)(1)(B). The prior version of the false
12 statements provision of the False Claims Act makes liable any person who "knowingly makes,
13 uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim
14 paid or approved by the Government." 31 USC § 3729(a)(2) (2006) (emphasis added to highlight
15 altered language).

16 5.4 The False Claims Act defines "knowingly" at 31 USC § 3729(b) to mean that
17 a person, with respect to information, "(1) has actual knowledge of the information; (2) acts in
18 deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of
19 the truth or falsity of the information" and further provides that no proof of specific intent to
20 defraud is required.

21 5.5 As amended on May 20, 2009, the False Claims Act defines the term "claim" to
22 mean, in relevant part: "any request or demand, whether under a contract or otherwise, for
23 money or property and whether or not the United States has title to the money or property, that --
24 (i) is presented to an officer, employee, or agent of the United States; or, (ii) is made to a
25 contractor, grantee, or other recipient, if the money or property is to be spent or used on the
26 Government's behalf or to advance a Government program or interest, and if the United States

1 Government --- (I) provides or has provided any portion of the money or property requested or
2 demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of
3 the money or property which is requested or demanded" 31 USC § 3729(b)(2)(A).

4 5.6 Any person who violates the False Claims Act is liable to the UNITED STATES
5 for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three (3) times the
6 amount of damages which the Government sustains because of the act of that person. 31 USC §
7 3729(a); 28 C.F.R. § 85.3(a)(9).

8 31 USCS § 3730 (d) Provides:

9 (1) If the Government proceeds with an action brought by a person under
10 subsection (b), such person shall, subject to the second sentence of this
11 paragraph, receive at least 15 percent but not more than 25 percent of the
12 proceeds of the action or settlement of the claim, depending upon the extent to
13 which the person substantially contributed to the prosecution of the action

14 ...

15 Any payment to a person under the first or second sentence of this paragraph
16 shall be made from the proceeds. Any such person shall also receive an amount
17 for reasonable expenses which the court finds to have been necessarily
18 incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and
19 costs shall be awarded against the defendant.

20 31 USCS § 3730 (d) Provides:

21 (2) If the Government does not proceed with an action under this section,
22 the person bringing the action or settling the claim shall receive an amount
23 which the court decides is reasonable for collecting the civil penalty and
24 damages. The amount shall be not less than 25 percent and not more than 30
25 percent of the proceeds of the action or settlement and shall be paid out of such
26 proceeds. Such person shall also receive an amount for reasonable expenses
which the court finds to have been necessarily incurred, plus reasonable
attorneys' fees and costs. All such expenses, fees, and costs shall be awarded
against the defendant.

31 USCS § 3730 (h) provides:

(h) Relief from retaliatory actions.

(1) In general. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter [31 USCS §§ 3721 et seq.].

(2) Relief. Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

VI. THE HUBZone STATUTE AND REGULATIONS

6.1 In the “Small Business Reauthorization Act of 1997” the United States established a program popularly referred to as HUBZone.

6.2 The act provided that a “contracting officer” could award “sole source” contracts to any qualified HUBZone small business if certain requirements were met. The SBA was required to enact regulations with regard to qualifications for HUBZone participation. These Regulations are found in 13 CFR Part 126 et. seq.

6.3 Under 13 CFR 126.200, to be a HUBZone contractor, a concern must:

- a. With its affiliates, must meet the size standard corresponding to its primary industry classification as defined in part 121 of this Chapter.
- b. Maintain a principal office located in a HUBZone and ensure that at least 35% of its employees reside in a HUBZone.
- c. Must apply for Certification.
- d. If a joint venture, both venture members must be qualified HUBZone small businesses. (Emphasis Supplied)

1 7.3 Mr. Laverentz indicated to Lisa Chapman Rosa of Total Site Services, a small
2 8(a) woman owned business, that his friend, Dennis Houston, Procurement Manager for WCH,
3 would arrange for the work to be subcontracted to be awarded to the entity, but it would be
4 “FE&C’s show, that FE&C would perform the work while it would be run through Total Site
5 Services to meet the set-aside requirements.” Total Site Services would “sit back and sign
6 checks” and receive its overhead and profit. Only after Total Site Services refused did FE&C set
7 up its full time employee, Jonetta Everano, in business as PENW.

8 7.4 At a subsequent meeting, Dennis Houston told Lisa Chapman Rosa that he knew
9 of her arrangement with FE&C.

10 7.5 Total Site Services rejected this opportunity because it was “fishy.” Total Site
11 Services was not a trucking company and was unwilling to take part in such a scheme.

12 7.6 FE&C thereafter approached ELR Consultants, owned by Emmitt Richards, to
13 team as a subcontractor on the Truck and Pup Contract. ELR was not a trucking company and
14 did not want to team. Upon Mr. Richards’ refusal to take part in the scheme, Defendant Bernie
15 Laverentz of FE&C commenced activities to establish Jonetta Everano as a woman owned small
16 disadvantaged business.

17 7.7 Upon this determination to set her up as a woman owned disadvantaged business,
18 Jonetta Everano informed Lisa Chapman Rosa of Total Site Services that she would be receiving
19 the Truck and Pup Contract, although it was weeks away from the submission of proposals.

20 7.8 PENW was organized in February, 2009 with FE&C as 49% owner. Jonetta
21 Everano personally invested no money in the formation of PENW, but rather had PENW loan
22 most of the 51% investment to her out of its future earnings. PENW had no assets, address, or
23 telephone numbers of its own and only entered into a sublease with FE&C in June, 2009, after it
24 was awarded the initial subcontract and all of the options for Truck and Pup. Jonetta Everano
25 was a full time employee of FE&C. The SBA determined that PENW was an affiliate of FE&C,
26 not eligible for award of the Truck and Pup Subcontract.

1 7.9 At the time of the initial remediation subcontractor award for IU 2&6 in
2 September, 2009, Jonetta Everano was still employed full time by FE&C, and still shared office
3 space. She did not agree on FE&C's buy-out until February, 2010, and her bonding and
4 insurance still was guaranteed by FE&C until at least June, 2010.

5 7.10 This activity led to the award of such subcontract on RFP R009166A00, for
6 Transportation of Direct Loaded Bulk materials from 100 Area Waste Sites to ERDF, "Truck
7 and Pup", to PENW, a company known by all defendants to be not qualified to perform such
8 work, and known by all defendants not to be a qualified woman owned small business. These
9 activities constituted bid rigging. This was a violation of the contract requirements that
10 subcontracts be competed for without collusion. Subsequent awards to PENW were also
11 awarded based on false certifications by defendants.

12 7.11 On February 23, 2009, Dennis Houston, Manager of Procurement and Property
13 for WCH, sent an email to other WCH Employees with regard to the WCH's Mentor Protégé
14 Program. He had been contracted by four businesses, including Jonetta Everano's company
15 PENW. The protégés would: "help us attain our goals in the three categories."

16 7.12 Of Phoenix Enterprises, NW he stated "Jonetta Everano, former WCH STR
17 teamed with FE&C for things like equipment support. She is a start-up business. Jonetta is a
18 Native American. She understands that to be a protégé you have to be in business for two years.
19 She is looking for team members who have been around."

20 7.13 On February 25, 2009 Jonetta Everano wrote to Dennis Houston, asking to be put
21 on a "qual list" for a project, saying, "either way you get FE&C's experience, programs, and
22 safety record." She thereafter emailed Dennis Houston, prior to the submittal of the Truck and
23 Pup proposals, saying that "I did partner with FE&C as we discussed."

24 7.14 PENW was formed effective 19 February, 2009. Jonetta Everano was allocated
25 51% of the ownership interest, and FE&C 49%. She invested no cash in the business, and only
26 gave a note for her percentage interest. All of the cash invested was from FE&C.

1 7.15 WCH solicited proposals for the truck and pup transport subcontract through a
 2 request for proposals dated April 9, 2009. A condition of the award required, first, the ability of
 3 the proposer to certify as a small business as defined by the North American Industry
 4 Classification System (NAICS) Code 562910 for work of environmental services, and second to
 5 be able to certify as a further set aside, such as a small; 8(a) disadvantaged, women-owned, or
 6 veteran owned business, etc., as defined by the Small Business Administration.

7 7.16 The invitation contained a penalty for false statement in paragraph 13, as
 8 prescribed in 18 USC §1001.

9 7.17 Being able to certify as a small business and as a small disadvantaged, women
 10 owned, or veteran owned business as defined by the Small Business Administration was a
 11 condition of award.

12 7.18 Prior to the award of the subcontract in question to PENW, defendant FE&C was
 13 not qualified for the award because it could not qualify as a small business under the NAICS
 14 definition or under the Small Business Administration standards.

15 **B. The Advertisement And Award Of The Truck And Pup**

16 7.19 At the time of the advertisement of the initial Truck and Pup subcontract and the
 17 award of the I U 2 & 6 remediation subcontract, Jonetta Everano:

18 a. Was employed full time at the offices of Federal Engineers and
 19 Constructors (FE&C) as a construction services manager.

20 b. At the time of procurement she had no separate address from FE&C,
 21 shared the same telephone number and fax number as FE&C, and only signed a sublease
 22 on June 1, 2009, after notice of award of the Truck and Pup subcontract.

23 c. She purchased administrative services, plant, labor materials, tools,
 24 supplies, transportation, equipment, supervision from FE&C, and FE&C was to perform
 25 all operations necessary to perform the contract.
 26

1 d. Her business had no employees or receipts. Defendant Bernie Laverentz
2 was authorized with her to negotiate the procurement.

3 e. She had no contractor's registration, held no required certifications, and
4 lacked the experience required to perform.

5 f. Her business had no Department of Transportation Motor Carrier Number

6 g. Her business had no Federal Employee Tax ID Number

7 h. The SBA found as a fact that PENW was affiliated with FE&C and that
8 FE&C was, with PENW, over the average receipt limit of \$14 Million annually. This
9 made PENW other than a small disadvantaged business and not eligible for award per
10 WCH's basis of award.

11 7.20 As part of the bidding process for the Truck and Pup Contract, PENW and Jonetta
12 Everano were required to certify their small business status to be eligible to submit and bid and
13 to compete for the award.

14 7.21 WCH's contract with DOE contained prohibitions against demanding or offering
15 future employment or anything of value to a procurement official, 41 USC §423. This was
16 incorporated in the Truck and Pup Contract as well as subsequent contract packages let by WCH
17 as General Condition Section 9.16.

18 7.22 Federal Regulations FAR subpart 9.5 and the contract documents for the Truck
19 and Pup (and subsequent subcontracts) required that an Organizational Conflict of Interest (OCI)
20 and questionnaire be submitted with the subcontractor's proposal for the bid to be responsive and
21 eligible for consideration for award. If PENW/FE&C had submitted a complete and truthful OCI
22 questionnaire, certified as required by law and the contract documents, WCH would have had to
23 not consider the bid because:

24 a. It would have revealed that PENW and FE&C were affiliated, and thus
25 PENW was not eligible to compete for award.
26

b. It would have revealed that Jonetta Everano had previously worked on WCH contracts with Sue Palmersheim, and had years of employment with WCH that biased WCH in favor of accepting PENW's bid for the Truck and Pup and subsequently awarded contracts. It would also have shown that even though her company's bid was on its face non-responsive, WCH waived timeliness requirements for PENW's qualifying to bid, and WCH entered into a subsequent course of conduct in awarding her cost reimbursement contracts without competition as required by FAR subpart 6.101.

7.23 Defendant Jonetta Everano of PENW was ultimately selected to perform the project, even though PENW was not an independent business and could not qualify under the technical requirements in the Statement of Work or Basis of Award section of the advertisement. All of WCH's evaluators considered solely the experience of the ostensible subcontractor, FE&C, when considering the award.

7.24 Relator Savage, on behalf of her company, timely protested PENW's size and eligibility to the U.S. Small Business Administration. The Small Business Administration determined that PENW was not a small business for purposes of the procurement. Because of her reliance upon FE&C the size of that firm was also considered. The basis for this determination included, *inter alia*, Jonetta Everano was a full-time employee of FE&C; that PENW and FE&C occupied co-located office space; that PENW and FE&C shared an insurance policy; that PENW and FE&C received assistance from FE&C to prepare cost proposals; PENW had no employees and had no receipts; all the key employees identified in the proposal were employed by FE&C; PENW had no independent qualifications.

7.25 When Salina Savage informed Dennis Houston that the award to PENW was illegal and that she was protesting to the SBA asking for a size determination, Mr. Houston responded:

a. "Who in the hell did she think that she was to question him."

b. "If you protest you will never get another contract at Hanford."

1 c. “If SBA determined FE&C to be affiliated he would just change the award
2 to a large business and not take small business credit.”

3 d. “He didn’t give a rip about this contract he had never been questioned
4 before.”

5 7.26 Savage requested a meeting with Charles Spencer, President of WCH. She
6 wanted to discuss Dennis Houston’s threats. Dennis Houston, as well as counsel for WCH was at
7 the meeting. She invited Dennis Houston to contradict anything that she recounted: he did not.

8 7.27 Savage informed the participants at that meeting that she was going to go to DOE
9 and file a lawsuit over the illegal award if it was not reversed.

10 7.28 As threatened, Savage’s company was never given the opportunity to
11 meaningfully compete for transportation contracts let by WCH. Every transportation contract for
12 disposal at ERDF was thereafter let illegally, without competition by WCH to PENW, or to
13 Phoenix-ABC A Joint Venture.

14 7.29 Each transportation contract let without competitions constituted a separate act of
15 retaliation in violation of 31 USC §3730 (h)1, by reason of her lawful acts in furtherance of an
16 action under the False Claims Act, and in her efforts to stop one or more violations of the false
17 claims act.

18 7.30 The SBA had exclusive jurisdiction to finally determine that PENW was other
19 than small under 13 CFR §121.401, because the contract between WCH and the DOE was a
20 “Federal procurement program,” and under FAR 52.219.8, 52.219.9 as adopted by WCH in its
21 Subcontracting Plan “status as a small business is required or advantageous.”

22 7.31 Under 13 CFR §121.403, the SBA’s size determination was binding upon the
23 parties.

24 7.32 Under 13 CFR §121.1009, upon the determination of the SBA that PENW was
25 not a small business eligible for award, the Contracting Officer was required to terminate the
26 award, and to not exercise any remaining options.

1 7.33 Dennis Houston, even before the decision of the SBA on the size protest of
2 PENW, informed the DOE that if PENW was determined to be other than small as it represented
3 itself, he would merely not take the credit for small business and would proceed to award it as a
4 large business.

5 7.34 Switching the size requirements so as to award to an ineligible subcontractor after
6 a size determination is a violation of the Small Business Act, 15 USC §637 and 645. Mr.
7 Houston nonetheless asserted that the laws did not apply to WCH.

8 7.35 Despite the finding of the SBA, WCH proceeded to award the hauling contract to
9 PENW, in violation of Section 16(d) of the Small Business Act, 15 USC §645(d), which
10 provides severe criminal penalties for knowingly representing the small business size status of
11 the concern in connection with procurement programs.

12 7.36 The size of the contract awarded to PENW was approximately \$4.8 million.

13 7.37 Through collusion and foreknowledge obtained from WCH and FE&C,
14 defendants were able to take advantage of knowledge that the actual haulage contract would be
15 extended to 67 weeks. This enabled defendants to have advantages in pricing not accessible to
16 other proposers such as Salina Savage's firm. Had Relator Savage's firm, Savage Logistics,
17 known, as did Jonetta Everano, Bernie Laverentz, FE&C and PENW, that the full 67 weeks of
18 hauling would be contracted for; Savage Logistics' price would have been at least \$300,000
19 lower than the price offered by FE&C and PENW. The Government has been damaged at least
20 by that sum through false claims on the Truck and Pup Contract alone.

21 7.38 On information and belief, the original bid dates for the project were delayed
22 several months so as to allow PENW to file its formation documents in order to claim to be a
23 small, disadvantaged, woman-owned business. FE&C agreed to provide PENW with all of the
24 financing, facilities, offices, phones, management, trucks and bonding to bid the project.

25 7.39 Dennis Houston and Sue Palmersheim of WCH willfully failed to enforce
26 responsibility and eligibility standards, which if enforced in accordance with the invitation for

1 bid would have rendered PENW not eligible for award under the competitive bidding laws
2 binding upon WCH under its contract with the United States.

3 7.40 Additionally, the contract called for billings and progress payments every 30
4 days. It required billing invoices from subcontractor to contractor. Each billing from
5 PENW/FE&C represented a certification that PENW was in compliance with the requirements of
6 the SBA's Small Disadvantaged Women Owned Business program. In fact, from the date of the
7 SBA's size determination, PENW, FE&C, and WCH knew that PENW was not in compliance.

8 7.41 As set out in the Complaint in Intervention of the United States, WCH thereafter
9 billed the Department of Energy for the amounts paid to PENW, each invoice of which
10 constituted a certification of compliance with the SBA requirements, and the requirements of the
11 solicitation and of WCH's contract with DOE, making each billing a false claim under the False
12 Claim Act.

13 7.42 Each of those false claims subject the false claimant to penalties of \$11,000.

14 **C. The Subsequent Contracts On I U 2 & 6 Remedial Action Of The 100 I U 2**
15 **& 6 Waste Sites**

16 7.43 After the award of the Truck and Pup contract to PENW, Sue Palmersheim and
17 WCH continued in a course of conduct intended to frustrate the Subcontracting Plan that
18 involved false statements to the DOE. These actions violated the laws and regulations that
19 required a good faith performance under the Subcontracting Plan, submission of subcontracts to
20 genuine competition, and award of contracts to *bona fide* small, disadvantaged, woman-owned
21 businesses.

22 7.44 In a letter to SBA to SBA OHA dated July 20, 2009 Sue Palmersheim undertook
23 to abide by the SBA's ruling on future procurements. In her letter Ms. Palmersheim stated: "In
24 execution of WCH's responsibilities under its prime contract, WCH is required to maximize the
25 utilization of small business concerns for purchasing goods and services. In the event of a
26

1 decision that changes the size determination, WCH will revise the periodic reports required by its
2 prime contract and will use the ruling in follow on procurements.”

3 7.45 Not only did Sue Palmersheim and WCH exercise all options not yet taken by
4 WCH on the Truck and Pup contract, she and WCH continued to award contracts to PENW with
5 knowledge, as defined in 31 USC 3729 (b) (1) (A) that PENW was still acting as a front
6 company for FE&C.

7 7.46 At about the same time that the Truck and Pup contract was being awarded, WCH
8 advertised a project denominated Remedial Action of the 100 IU 2 and 100 IU 6 Waste Sites.
9 This was a total small business set aside for small disadvantaged business, women owned small
10 business, or service disabled veteran owned small business with a probable contract value of \$5.1
11 Million. During Relator Savage’s SBA size protest of PENW, WCH canceled the solicitation and
12 reissued it later. However, WCH purposefully limited knowledge and opportunity to compete
13 for this contract in order to guard against another protest from Savage and proceeded to make an
14 award to PENW, despite having actual knowledge both from the SBA determination, and also
15 from statements by Jonetta Everano, that her relationship with FE&C was unchanged from that
16 based upon which the SBA had found her company other than small.

17 7.47 This was done by limiting competition on the re-advertised performance on IU 2
18 & 6 remediation to bidders who had attended the site visit on the canceled procurement, even
19 though a new site visit had been scheduled.

20 7.48 Sue Palmersheim and others within WCH had actual knowledge that the same
21 factors that lead the SBA to find PENW other than a small woman owned business had not
22 changed. This was a knowing violation of FAR 52.219-25. Sue Palmersheim and others within
23 WCH knew that FE&C would be “doing all the work.” The evaluation of proposals by WCH on
24 the IU 2& 6 bids by WCH’s evaluation team stated: “The PENW-QA-02 is a nearly exact
25 duplicate of the FE&C QA program manual FE&C QA 02 Rev 8. The key persons proposed are
26 all FE&C employees, familiar with the FE&C QA program.”

1 7.49 IU 2&6 remediation contract #C011535A00 was awarded to PENW on
2 September 23, 2009. By the time of award, WCH had actual knowledge that PENW was not a
3 small disadvantaged woman owned business, and was not in a legal mentor protégé relationship
4 with FE&C.

5 7.50 WCH had actual knowledge that PENW was continuing to act as a front for
6 FE&C and was acting as a pass through company for FE&C, merely providing its WOSB name
7 and status while FE&C actually performed the work. Under applicable SBA regulations, FE&C
8 was an “ostensible subcontractor,” and furnished all of the key employees, resources, and
9 experience. PENW met none of the technical or experience requirements to perform the work.

10 7.51 On September 29, 2009 Jonetta Everano wrote to Patrick Jewell of WCH
11 informing him that her “restructuring strategy” was underway and that she was using Jessica
12 Morales as a “primary resource.” “She knows the regulations VERY well and can field some of
13 the concerns from an SBA standpoint.”(Capitalization by Jonetta Everano).

14 7.52 Jonetta Everano told WCH that she was still a full time employee of FE&C and
15 was financially unable to provide bonding, or insurance.

16 7.53 The bids were being considered at the time of Savage’s protest of PENW’s size
17 on the Truck and Pup Contract, and WCH and FE&C had actual knowledge that PENW was not
18 eligible to compete for award or to be awarded that subcontract. The IU 2&6 contract was
19 performed until at least March, 2011, and with modifications totals at least \$15,231,484.00.
20 PENW submitted invoices and documents to WCH. WCH in turn sent invoices and received
21 payments from DOE for the work. Each invoice sent by either WCH or PENW/FE&C for the IU
22 2&6 subcontract constituted a separate false claim that the parties were in compliance with the
23 Subcontracting Plan, and all laws and regulations alleged above in Count IV.

24 **D. The Sole Source I U 2&6 Transportation Contract #S015090A00**

25 7.54 On September 15, 2009, even before formal award of the IU 2&6 subcontract,
26 procurement specialist Sue Palmersheim began to seek out reasons on how she could “sole

1 source” the hauling portion of the IU 2&6 contract to PENW without submitting the work to
2 competition. In October she requested reasons from her co-workers at WCH to support her
3 “pitch” of a sole source contract rather than a competition for the work. Her co-worker Dean
4 Strom agreed that a sole source was a favorable option, “if we are able to pull it off.”

5 7.55 WCH, under the terms of its contract with DOE, was required to award contracts
6 only after full and open competition in accordance with the Competition in Contracting Act 41
7 USC §253, and ARRA. The only exceptions to this requirement were found in FAR 6.302-1.
8 Those exceptions were known by WCH not to exist. The Justification form for other than Full
9 Open Competition (JOFOC) submitting by WCH did not contain the requirements of FAR
10 6.303-2 and was materially false in that there was in fact no “unusual or compelling urgency” or
11 other true reason to use a sole source.

12 7.56 The Sole Source Justification is a form required by FAR 52.244-2 a part of
13 WCH’s contract with the DOE and was signed by WCH on April 22, 2010, a full seven (7)
14 months after Ms Palmersheim determined to “pitch” a sole source, and cited “unusual or
15 compelling urgency” as her rationale. This rationale was untrue and known to be untrue by Ms.
16 Palmersheim and the others at WCH who signed the form.

17 7.57 WCH filed the “Non-Competitive (Sole Source) Justification Form” with the
18 DOE on April 22, 2010, on requisition R015090A00 for the \$2,800,000 contract with PENW,
19 which was materially false as to the sole source justification and known by WCH to be
20 materially false in that the schedule was not in jeopardy and WCH had at least seven (7) months
21 to arrange for the project to be submitted to competition.

22 7.58 At the time of the Sole Source Transportation contract award, PENW was still
23 involved and dependent upon FE&C, a fact well known to Sue Palmersheim and WCH.

24 7.59 The Sole Source Justification Form went on to state: “PENW is a small
25 disadvantaged, woman owned business with proven performance, safety and quality programs;
26 and the experience required for the described services on this project. In May 2009, PENW was

1 awarded a competitively bid WCH transportation subcontract and over the past 12 months has
 2 developed a mature safety culture while performing this scope for WCH at several remedial
 3 waste sites (100H, 100D, and IU2&6)."

4 7.60 In fact the May 2009 Truck and Pup contract was not competitively bid to small
 5 disadvantaged businesses because WCH changed the award to a large business after SBA's size
 6 determination.

7 7.61 All of the contracts issued to PENW after the initial Truck and Pup Contract in
 8 2009 were based on the misrepresentation that it was a small disadvantaged woman owned
 9 business. Even if she subsequently became a bona fide woman owned small disadvantaged
 10 business, the initial misrepresentation gave her company an advantage of being already funded,
 11 mobilized and an incumbent contractor.

12 7.62 WCH took credit under its Subcontracting Plan with the DOE for the dollar
 13 amounts of both the IU 2& 6 remediation contract and the sole source IU 2&6 Transportation
 14 Contract as awards to a Small, Disadvantaged, Woman Owned Business. Each document or
 15 invoice submitted by WCH, FE&C, and PENW constituted a false claim of compliance with the
 16 Subcontracting Plan, and the statutes and regulations cited above in Count IV.

17 **E. Other Illegal Sole Source Awards under the I U 2& 6 Contract.**

18 7.63 **100-C-7.** On or about May 31, 2010, WCH awarded a sole source contract in the
 19 form of a modification to I U 2&6 denominated 100-C-7 for Concrete Removal. There was no
 20 justifiable reason to sole source the work to PENW and WCH employees knew that the work
 21 would in fact be performed by FE&C, with PENW acting merely as a front and contributing its
 22 WOSB status.

23 7.64 The amount of the sole source award was \$2,695,928.90, and was included in
 24 Mod 1, change notice 10 to the I U 2 & 6 contract with PENW. WCH took credit for this as an
 25 award to PENW as an award to a small woman owned business.
 26

1 7.65 On or October 1, 2010 WCH executed another Sole Source Justification for 600-
2 149 UXO and PU Vault Demolition. Although executed to PENW WCH knew that FE&C
3 would be doing the work and that PENW was acting merely as a front and contributing its
4 WOSB status.

5 7.66 The sole source justification was materially false and WCH has actual knowledge
6 of its falsity because it knew that FE&C would be actually performing the work with PENW
7 merely contributing its status as a Small Disadvantaged Woman Owned Business.

8 7.67 This was issued under modification 3 in the sum of \$1,452,455 and WCH took
9 credit for this modification as an award to a woman owned small business.

10 7.68 **100 D & H.** On or about December 1, 2010 WCH issued Mod 4 to the I U 2 & 6
11 contract in the amount of \$2,365,922.43. In the words of Richard Hansen, procurement property
12 manager of WCH:

13 “The use of Phoenix was just a vehicle to place this work as a change notice
14 without having to competitively bid the work.”

15 7.69 On 20 May 2010 Mr. Hansen wrote to Rodney Harrison:

16 2. Sole source justification with Phoenix for 100 H (change notice work). Shared
17 Schedule with Foster, Cantwell and Martin. I am to here this afternoon regarding path of either
18 Phoenix vs. competition among on site.

19 Todd Nelson brought up that FE&C has complained about not including them on work
20 being awarded. Focus on Phoenix work awarded on sole source basis.

21 Dave Martin worked with Becky Hewson and we really do have a good story for the sole
22 source for Phoenix”

23 7.70 The representations in the sole source justification forms for other than full and
24 open competition, (JOFOC) in connection with the awards to PENW were false and known by
25 WCH to be false when made. There was no unusual or compelling urgency to sole source the
26 work to PENW. The work would be done by FE&C using Phoenix as a front who contributed

1 only its status as a WOSB. WCH's summary and justification recited that "Washington Closure
2 Hanford (WCH) selected FE&C as the single source of accomplishing the Work of each Change
3 included in this modification."

4 7.71 On August 5, 2010 Greg Dixon of WCH sent a revision notice on the referenced
5 Mod 4. It was addressed to Phoenix Enterprises NW LLC Ned Hutchins, I U 2 &6 Project
6 Manager, 3100 George Washington Way, Suite 106, Richland, WA 99352. Ned Hutchins, at
7 that time and after, was a Vice President of FE&C and the address was the home office of
8 FE&C.

9 7.72 The sole source justification forms for the modifications, *supra*, are in violation of
10 the Competition in Contracting Act, 41 USC§243, the FAR and DOE's acquisition regulations.
11 The false information on the forms that there was unusual and compelling urgency when WCH
12 had actual knowledge that there was not, and merely wished to avoid competing the work is a
13 false certification of compliance by WCH with the Subcontracting Plan and the statutes and
14 regulations cited in this complaint including, but not limited to, FAR Subpart 6.3. The presumed
15 loss to the United States for the modifications is the total amount of the modification awarded in
16 knowing violation of the competition in contracting act.

17
18 **F. Claims Against Washington Closure Hanford, Phoenix Enterprises NW, LLC,**
19 **Acquisition Business Consultants, (Hereafter ABC) Jonetta Everano, Jessica Morales, For**
20 **Violation Of The False Claims Act, 15 USC 637, 645, The HUBZONE Program Codified**
21 **Under 15 USC §657, And The Small Business Act 15 USC 637 and 15 USC 645**

22 7.73 PENW is not identified as a certified HUBZone business in the CCR or in SBA's
23 List of HUBZone Business Concerns and WCH did not contact the SBA to confirm its
24 certification.

25 7.74 ABC did not maintain or attempt to maintain the employee residency percentage
26 as required by 13 CFR 126.602. It has no employees in Washington State.

7.75 Neither PENW nor ABC maintains an office in a HUBZone. ABC's office is
located at 2675 Stonecreek Drive in Richland, Washington.

1 7.76 On July 1, 2010, PENW and ABC formed Phoenix-ABC A Joint Venture. The
2 address for Phoenix-ABC A Joint Venture is 3100 George Washington Way, Suite 106,
3 Richland, WA, which is the same address as PENW.

4 7.77 WCH and Phoenix-ABC A Joint Venture purported to enter into a DOE mentor-
5 protégé agreement on October 20, 2010. This mentor-protégé agreement was not in accordance
6 with the terms of the River Corridor Contract between WCH and the DOE in that it was not in
7 accordance with Department of Energy Regulation DEAR 48 CFR 919.70. At the time of the
8 Mentor Protégé Agreement neither PENW nor Phoenix-ABC A Joint Venture was qualified by
9 being in business for at least two (2) years.

10 7.78 WCH had actual knowledge that Phoenix-ABC A Joint Venture was not eligible.
11 Richard Hansen of WCH wrote on August 17, 2010:

12
13 I believe that the company needs to be in business for two years. That is the
14 entity, not the parties of the entity. Therefore, the new JV that Phoenix and ABC
15 have formed do not qualify until August 6, 2012.
16 Phoenix does not meet the qualifications either. . .for approximately 6 months.

17 7.79 Sue Palmersheim of WCH suggested that WCH “take the risk and propose the
18 entity to the DOE.” “By the time all the paperwork is processed and the other MP’s graduate,
19 Phoenix will be just 3 Mo’s shy of the 2 years.”

20 7.80 Jonetta Everano emailed on 30 August 2010 to Jason Sperling of WCH: “I spoke
21 with Tony Harris briefly the other day about a status of becoming a protégé. He stated there may
22 be some issues on the interpretation of the “two years in business” for the protégé requirements
23 within the DOE Mentor/ Protégé program. Jessica Morales is working with OSDBU’s office
24 right now to get that interpretation clarification. According to what we are being told by their
25 OSDBU Washington DC office one of the entities of the JV has had to been in business for two
26 years, not the JV itself.”

 7.81 After receipt of Jonetta’s email of 30 August 2010 Richard Hansen responded:

1 1. Our procedures, BCS-300-3.2 , states that "...the firm..." "...must have been in the
2 business for at least two (2) years prior to application for enrollment into a DOE Mentor
3 Protégé Program." This mirrors the statement of DEAR 919.7007.

4 7.82 The response to the Mentor/Protégé questions from the DOE by Kent Hibben
5 small business specialist was, "Given that the firms that make up the joint venture individually
6 have met the requirements of AL 2005-08 and DEAR 919.70, that then should suffice to enable
7 the mutually desired arrangement to proceed, . . ."(Emphasis Supplied.) Neither WCH, nor
8 Jonetta Everano, nor Jessica Morales, nor Phoenix, nor ABC, nor the Phoenix ABC A Joint
9 Venture informed the DOE that the firms that made up the joint venture did not individually
10 meet the requirements of DEAR 919.70.

11 7.83 WCH thereupon proceeded to award a master contract, C016925A00 without
12 competition to Phoenix-ABC A Joint Venture as a small woman-owned HUBZone business.
13 Twenty-five Small and Disadvantaged businesses expressed interest in competing for this
14 contract, including several HUBZone businesses. This contract was issued in the form of a
15 "Master Agreement" calling for Truck and Pup task orders with the initial amount of \$3,998,000
16 awarded on January 25, 2011. This was less than two years after the date of PENW's formation.

17 7.84 WCH awarded Phoenix-ABC A Joint Venture a sole source Master Agreement on
18 January 25, 2011 with a size standard of \$12.5 million. Due to the large dollar value of contracts
19 awarded to PENW, there is a strong possibility that Phoenix-ABC A Joint Venture did not
20 qualify as a small business for this procurement or the DOE Mentor-Protégé program.

21 7.85 This contract now totals over \$10,500,000; of which \$7,998,319 was ARRA
22 funded.

23 7.86 Phoenix-ABC A Joint Venture was not and is not a qualified or certified
24 HUBZone business. The SBA, who is solely empowered to approve HUBZone entities, has
25 issued regulations covering joint venture eligibility, particularly 13 CFR 126.616.
26

1 “What requirements must a joint venture satisfy to submit an offer on a HUBZone
2 Contract?”

3 (a) HUBZone joint venture. A qualified HUBZone SBC may enter into a joint venture
4 with another qualified HUBZone SBC for the purpose of submitting an offer for a
5 HUBZone contract. The joint venture itself need not be certified as a qualified HUBZone
6 SBC.

7 7.87 The contract and task orders were awarded to Phoenix –ABC A Joint Venture in
8 knowing violation of 13 CFR 126.616.

9 7.88 Phoenix-ABC A Joint Venture was formed so WCH could sole source contracts
10 to their protégé without competition and take credit for HUBZone under WCH’s Subcontracting
11 Plan. PENW is performing the majority of this work scope. The Master Service Agreement
12 states: “WCH identified the need for additional transportation services and the decision was
13 made to award a sole source Master Agreement subcontract to Phoenix-ABC for the
14 performance of this work due to PENW’s past performance.” ABC brings very little to the Joint
15 Venture.

16 7.89 WCH knew that, under the terms of its Subcontracting Plan, which adopted FAR
17 52.219-9(e) (4) it was not allowed to accept the representations of either ABC or PENW as to
18 their respective status as HUBZone certified contractors, but rather had to confirm their status by
19 accessing the Central Contractor Registration (CCR) or by contacting the SBA. If WCH had
20 done either of those requirements it would have found that PENW was not a certified HUBZone
21 contractor and to this date is not a certified HUBZone contractor.

22 7.90 WCH reported the sole source HUBZone contracts awarded without competition
23 of Phoenix-ABC A Joint Venture to the DOE in order to reach its HUBZone subcontracting goal
24 of \$52,564,000 required under its contract No. DE-RP06-04RL-14655. This reporting
25 constitutes a reverse false claim of compliance in order to avoid liquidated damages provided in
26 its Subcontracting Plan, Attachment J-4 to its contract with DOE.

1 7.91 This course of conduct and knowing violation of Federal Law and Regulations
2 constitutes “Failure to make a good faith effort to comply with the subcontracting plan” as
3 defined under FAR 52.219-16 (a) and (b).

4 7.92 The foregoing actions constitute false claims under 31 USC§ 3729-32 and under
5 ARRA.

6 7.93 In addition to the presumed loss in the entire contract amounts illegally awarded,
7 the United States has been damaged by paying more than it would have paid for the same
8 services if they were competed, and not illegally awarded to an ineligible HUBZone contractor.
9 Under the law the presumed loss to the United States is the entire amount of the contract and task
10 orders let to an ineligible subcontractor falsely claiming HUBZone status.

11 **G. Sage Tec, LLC False Claims [Laura Shikashio, Federal Engineers And**
12 **Constructors]**

13 7.94 Sage Tec, LLC is another front company which relies heavily on FE&C’s
14 qualifications. Sage Tec, LLC was formed on February 27, 2009 (8 days after PENW’s
15 formation date of February 19, 2009) and listed its address as 3100 George Washington Way,
16 Suite 106, Richland, WA (same address as PENW, Phoenix-ABC a Joint Venture, and at the
17 time, was the same address of FE&C).

18 7.95 Sage Tec, LLC’s purported owner is Laura Shikashio, the wife of Larry Burdge,
19 who at the time of its organization was FE&C’s Vice President of Construction Services.

20 7.96 On December 14, 2010, WCH awarded a \$5.3 million, small disadvantaged
21 woman owned business contract to Sage Tec, LLC and its teaming partner FE&C to clean up a
22 chromium-contaminated waste site near Hanford’s C Reactor.

23 7.97 Based upon information and belief that Sage Tec is performing a small portion of
24 this contract and the majority of the work is being performed by FE&C. Washington State
25 Department of Labor & Industries’ website lists Sage Tec as having “0” workers.
26

1 7.98 On information and belief WCH is including the contract award to Sage Tec in its
2 small subcontracting goals as a small disadvantaged woman owned business, when in fact Sage
3 Tec is another front company for FE&C.

4 7.99 Shane Biggam was working for WCH as a Subcontractor Technical
5 Representative and then became project manager for Sage Tec.

6 7.100 The projects let after September 2010 were let in violation of the Small Business
7 Jobs Act of 2010 and the presumed loss to the United States is the amount of the contract.

8 7.101 The forgoing described course of conduct constitutes false claims by both PENW
9 and FE&C and the individual defendants, ABC, Phoenix-ABC A Joint Venture, and Sage Tec by
10 falsely representing themselves as small, disadvantaged women owned, or HUBZone businesses.

11 7.102 The foregoing described course of conduct by WCH constitutes false claims by
12 false certifications express and implied that it was in good faith compliance with its
13 Subcontracting Plan as well as 15 USC 637 and 657.

14 7.103 The United States, by virtue of its complaint in partial intervention filed on
15 December 6, 2013 has taken on the primary responsibility for prosecuting the counts against
16 Sage Tec, LLC, Laura Shikashio, WCH, and FE&C related to the use of Sage Tec, LLC as a
17 front. By reason of that intervention Relator Salina Savage reserves her rights as a Relator/Party
18 under 31 USC SS 3730 (c) and (d).

19
20 **VIII. SALINA SAVAGE'S PERSONAL KNOWLEDGE AND INVESTIGATION**
21 **OF THE FALSE CLAIMS**

22 8.1 Following the notice of award to PENW, Salina Savage investigated PENW's
23 qualifications and background.

24 8.2 Salina Savage investigated the efforts of Bernie Laverentz and Dennis Houston to
25 rig bids on the subject procurement with Jonetta Everano and obtained statements from other
26 subcontractors who had been contacted as part of the scheme to rig bids.

1 8.3 Ms. Savage investigated leases of heavy equipment by PENW and FE&C, which
2 would not have been made unless the conspirators were aware that the project would be extended
3 to the full term of 67 weeks.

4 8.4 Salina Savage went to the management of WCH in 2009 after the apparent award
5 to PENW and protested to not only the management, but also the Contracting Officer, Dennis
6 Houston, making it known to them that she was investigating the procurement irregularities and
7 illegalities in the award to PENW.

8 8.5 Dennis Houston told her “how dare she question” him, that if she prevailed the
9 award would be changed to one for large businesses and that he would see that she never get
10 another contract.

11 8.6 This constituted retaliation that is illegal both under the False Claims Act, but also
12 under ARRA. Since 2009 at the time of her protest Salina Savage’s firm has not only not been
13 awarded a subcontract, but also not even allowed to compete for a subcontract with WCH.

14 8.7 The decision to change the designation of the award to other than a small
15 business, after having initially solicited bids for a subcontract limited to small businesses not
16 only violated the Subcontracting Plan, but also did not permit large businesses to compete, which
17 resulted in higher bids and further loss to the United States. Such activities were a violation of
18 15 USC §637 and §645 by all defendants.

19 8.8 Ms. Savage investigated the lack of qualifications of PENW and successfully
20 proved before SBA that PENW was an affiliate of FE&C, and was not eligible to compete for or
21 be awarded the Truck and Pup Subcontract.

22 8.9 But for the false certifications of eligibility and of compliance with the Federal
23 laws and regulations and Subcontracting Plans, PENW would not have been allowed to compete
24 for subcontracts subsequent to the illegally awarded Truck and Pup Subcontract.

8.10 Ms. Savage investigated other attempts by WCH and FE&C to set up front companies and to demand employment of contracting officials of WCH as managers of projects awarded to qualified women owned small businesses.

8.11 Ms. Savage investigated the difference in pricing for the Truck and Pup contract between that which the United States would have paid versus what it did pay by reason of the false claims.

8.12 Ms. Savage's information as to events and transactions was based upon her independent investigations, education, experience and knowledge.

8.13 Salina Savage is the first to file and is an original source under the terms of the False Claims Act.

IX. FALSE CLAIMS

9.1 Without limiting the specificity of the allegations above, which are incorporated in their entirety, as to their conduct and false claims, the Defendants committed the following false claims.

9.2 Conspired to rig bids so that PENW and FE&C would receive the Truck and Pup Contract.

9.3 Conspired to rig bids so that PENW and FE&C would receive the IU 2&6 contract set-a-side for small disadvantaged woman owned or veteran owned businesses and would receive follow-up IU 2&6 transportation contracts.

9.4 Knowingly awarded contracts set-a-side for small business to entities known to be other than small businesses.

9.5 WCH failed, in good faith, to adhere to the requirements of the Subcontracting Plan, the FAR, and applicable Federal small business statutes.

9.6 WCH failed to comply with the requirements of the ARRA by in good faith awarding contracts to small businesses and insure that contracts were fairly competed.

1 9.7 WCH failed to verify that both joint venturers involved in the Phoenix-ABC A
2 Joint Venture were certified HUBZone contractors before awarding over \$10 Million of Sole
3 Source Truck and Pup Transportation Contracts.

4 9.8 Failed to enforce OCI regulations that would have exposed that PENW was not an
5 independent small business.

6 9.9 WCH falsely reported its compliance with laws and regulations.

7 9.10 All defendants falsely certified their compliance with applicable Federal statutes,
8 regulations, and contract provisions in order to receive payment from the United States or from
9 WCH.

10 9.11 Each invoice on every contract obtained through false certifications or bid rigging
11 as specified in this complaint is a separate false claim, for which each of the defendants is liable
12 for a civil penalty of up to \$11,000.

13 **X. REVERSE FALSE CLAIMS**

14 10.1 The false claims by WCH were made to avoid paying back to the United States
15 penalties under WCH's contract with the United States Department of Energy for violation of the
16 Small Business contractor requirements of Section H, as provided in Section J of the contract
17 between WCH and the United States Department of Energy.

18 **XI. SEPARATE CLAIMS OF SAVAGE LOGISTICS AGAINST WCH, FE&C,**
19 **PENW, DENNIS HOUSTON, BERNIE LAVERENTZ, AND JONETTA EVERANO**

20 **A. Interference with Contract**

21 11.1 Defendants, and all of them, conspired, by inside information, bid rigging, and
22 false certifications, to deny Savage Logistics a contract which it was otherwise entitled to receive
23 for the Truck and Pup Transportation Contract.

24 11.2 Such conduct was an intentional, unlawful, and unpermitted interference with
25 Savage Logistics' right to receive the contract advertised for competition.
26

11.3 Under SBA regulations applicable to the original Truck and Pup contract WCH or DOE were required to terminate PENW's award and not to award any options. Defendants failed to do that.

11.4 Under the FAR a contract set aside for a small woman owned business may not be withdrawn or not awarded unless the price of the second low bidder is unreasonable or if there were no adequate competition.

11.5 Savage Logistics' bid on the Truck and Pup was in all respects responsive and responsible, there was adequate competition, her bid was lower than any other bona fide bidder and her price was \$100,000 lower than WCH's "fair cost estimate."

11.6 But for the false claim of PENW being a small disadvantaged woman owned business, and WCH's flouting the good faith requirements of its own Subcontracting Plan, Savage would have been awarded the contract.

11.7 PENW and FE&C have been unjustly enriched by their false claims to be eligible for award.

11.8 Savage has been denied its anticipated profits and contribution to General and Administrative expenses by the false claims and bad faith of Defendants.

11.9 The amount of such damages will be proven at trial, but are stated at this time to be \$500,000.

XII. VIOLATION OF THE WASHINGTON UNFAIR TRADE PRACTICES ACT
RCW 19.86

12.1 The acts alleged to have been committed by all Defendants constitute unfair and deceptive acts in commerce under the Washington Unfair Trade Practices Act, including but not limited to:

a. Conspiring to rig bids and allocate contracts in violation of Federal and State Law.

b. Combining to limit competition on Federal Contracts affecting commerce.

1 c. Denying Co-Plaintiff Savage Logistics the benefit of contract by reason of
2 deceptive acts.

3 12.2 Co-Plaintiff Savage Logistics is entitled to recover, in addition to its lost contract
4 expectancy, its attorney fees, costs, and trebled damages as permitted by RCW 19.86.090.

5 **XIII. RETALIATION**

6 13.1 Savage repeats-realleges and incorporates by reference the allegations in the counts
7 set out above.

8 13.2 Savage Logistics and Salina Savage have been the victims of retaliation on the part
9 of WCH as a result of her protest of the size status of PENW and her lawful investigation of false
10 claims by WCH, PENW, and FE&C and the attempts to stop one or more violations of the False
11 Claims Act. Dennis Houston, Contracting Officer of WCH, threatened that her firm would be
12 barred from further contracting opportunities if she protested to the SBA.

13 13.3 By means of restricted competition, wrongful sole source contracts, and
14 fraudulent HUBZone contracts, WCH denied Savage the opportunity to compete for work that
15 her firm was qualified to perform and would have received had her firm had an opportunity to
16 compete.

17 13.4 WCH has further retaliated by bringing vexations and baseless counterclaims for
18 defamation against Savage.

19 13.5 The amount of damages for retaliation will be furnished by supplemental pleading
20 and proven at trial.

21 **PRAYER**

22 WHEREFORE, Qui Tam Plaintiff/Relator Salina Savage prays for judgment against all
23 defendants as follows:

- 24 1. That defendants cease and desist from violating 31 USC §§ 3729 *et seq.*
25 2. That the Court enter judgment against defendants jointly and severally in an
26 amount equal to three times the amount of damages that the United States has sustained by reason

1 of their acts in violation of the Federal False Claims Act, as well as a civil penalty of \$11,000 for
2 each violation of 31 USC §3729.

3 3. That the Relator be awarded the maximum amount allowed pursuant to 31 USC
4 §3730(d) of the Federal False Claims Act.

5 4. That the Relator be awarded all costs of this action, including attorney fees and
6 expenses.

7 5. That Relator Savage on her behalf and Savage Logistics be awarded damages for
8 Retaliation including special damages by not being allowed to compete for and win transportation
9 contracts set aside for small disadvantaged women owned businesses who met the technical
10 requirements of the procurement, doubled, plus her attorney fees, expenses and costs.

11 6. That Co-Plaintiff Savage Logistics, L.L.C. be awarded damages in an amount
12 stated for purposes of this complaint to be \$500,000.00 as damages for defendants' interference
13 with its contract expectancy to be awarded the Truck and Pup Contract S009166A00contract at
14 issue.

15 7. The Co-Plaintiff Savage Logistics, L.L.C. be awarded trebled damages, plus its
16 attorney fees and costs because of the violation of the Unfair Trade Practices Act in Washington.

17 8. For such other and further relief as the court deems just and equitable.

18
19 DATED this 10th day of January, 2014

20 JAMESON BABBITT STITES
21 & LOMBARD, PLLC

22 By: s/Bruce P. Babbitt
23 Bruce P. Babbitt, WSBA #4830
24 Attorneys for Plaintiff Salina Savage and Savage
25 Logistics
26